THE HON'BLE SRI JUSTICE ELIPE DHARMA RAO

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WRIT PETITION NO.17557 of 2005

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Dated: 09.08.2005

Between:

B.L. Devendra, Sarpanch,

Chanugondla Gram Panchayat, Dhone (M), Kurnool District,

..... PETITIONER

AND

1 The Collector, Kurnool, Kurnool District and three others,

....RESPONDENTS

THE HON'BLE SRI JUSTICE ELIPE DHARMA RAO

-

WRIT PETITION NO.17557 of 2005

ORDER:

This writ petition is filed seeking a Mandamus declaring the proceedings in Roc.No.1463/PTS.A1/05, dated 22.06.2005 and in Roc.No.1463/PTS.A1/05, dated

01.08.2005 issued by the 1st respondent as illegal and arbitrary and contrary to Section 22(1)(2) of the A.P. Panchayat Raj Act, 1994 (for short "the Act") and to set aside the same.

The petitioner states that he was elected as Sarpanch of Chanugondla Gram Panchayat, Dhone Mandal, Kurnool District in the year 2001. While so, the 1st respondent, based on the complaint made by one Smt. K. Mallamma, resident of Chanugondla village, issued a show-cause notice dated 22.06.2005 to the petitioner calling upon him to submit his explanation within seven days as to why he should not be disqualified to hold the post of Sarpanch for having more than two children under Section 19 (3) of the Act. Pursuant to the said notice, the petitioner is stated to have submitted his explanation within the stipulated time stating that he is not having three children as alleged in the notice. The grievance of the petitioner is that the 1st respondent, without considering his explanation, issued the impugned proceedings dated 01.08.2005 withdrawing his cheque drawing powers, which is contrary to Section 22 of Act.

Heard the learned counsel for the petitioner and the learned Government Pleader for Panchayat Raj and Rural Development.

The short question involved in this writ petition is whether the 1st respondent is empowered to pass any orders disqualifying the petitioner straightaway from continuing as Sarpanch of the said Gram Panchayat by the impugned proceedings under Section 19(3) read with Section 22 of the Act.

As per Section 22 of the Act, if any allegation is made against any person, who is elected as a member of Gram Panchayat, the 1st respondent has to refer the dispute on an application to the District Court having jurisdiction over the area in which the office of the Grampanchayat is situated and the 1st respondent cannot straightaway pass any orders disqualifying the petitioner as Sarpanch of the Grampanchayat.

Since the 1st respondent has no jurisdiction to disqualify the petitioner from the post of Sarpanch under Section 19(3) read with Section 22 of the Act, the impugned show-cause notice dated 22.06.2005 and the consequential proceedings dated 01.08.2005 can not be sustained and are liable to be set aside.

Accordingly, the writ petition is allowed and the impugned show-cause notice dated 22.06.2005 and the consequential proceedings dated 01.08.2005 are set aside. However, this order does not preclude the respondents to take an appropriate action for referring the matter to the District Court having jurisdiction over the area in which the Grampanchayat is situated. No order as to costs.

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(ELIPE DHARMA RAO, J)

Date: 09.08.2005

Note:

Issue CC in one week

(B/O)

Nsr

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Bilal Nazki the Acting Chief Justice on this

Tuesday, the Ninth day of August, Two Thousand and Five.

……..REGISTRAR